



**Shoreland Management Advisory
Committee Meeting Notes
January 30, 2003
Stevens Point**

I. Welcome – Al Shea – Advisory Committee Chair and Director of the Bureau of Watershed Management, Department of Natural Resources

Shea – made the committee aware of new directions to DNR staff: to revise NR 116 and NR 118 as well as NR 115 – There is a potential for confusion if the Department establishes 3 advisory committees and three different rulemaking processes.

Proposal:

- a. Expand the discussion at next meeting (March 25th) to include the floodplain rule change issues and appoint a few new members to the AC for this issue specific meeting. Hold a two-day meeting – either March 24th or 26th.
- b. Set NR 118 aside for the time being at least, because it has some unique issues and constraints.
- c. By Feb. 14th, please let Toni Herkert know what your reaction is to this proposal.

Al explained that: JCRAR at hearing last week raised issue of floodproofing of nonconforming structures in the floodway and JCRAR is generally interested in the issue of nonconforming structures. Other relatively minor “cleanup” matters might be included in NR 116 changes.

Some committee members are concerned about advancing the schedule of meetings.

Al Shea: we have a 15 day window to get back to JCRAR (by Feb. 7th) to tell the committee what we propose to do and our proposed schedule.

Comments from committee members:

- It may be difficult to discuss floodplain standards at the same time because of FEMA requirements.
- But the basic standards should be as consistent as possible.
- We should know why there have to be differences between floodplain and shoreland standards, if that is the case, to inform our discussion.

Al asked how many committee members will be unable to attend the March 25th meeting (2 will not; 1 maybe). Al added setting future meeting dates to the agenda right after lunch.

There continues to be a lot of confusion or misunderstanding about the rulemaking process that DNR is planning to follow.

Shea: The process that we will follow will be very open and public. We'll take recommendations of the advisory committee to public listening sessions around the State in the fall. We'll then take a rule draft to the Natural Resources Board seeking permission to take a specific rule draft to public hearings. The Board may require changes to the purposed rule. There is also legislative review process; there will no doubt be legislative hearings. We are proposing a process that goes well beyond what is required of state agencies for rulemaking.

Glenn – He was left with the understanding that there would be a public comment period at the end of future meetings, after the discussion at the last meeting. He thought we voted to allow public comment – or at least that there was consensus to allow public comment.

Shea: He suggested it himself. Since then, he has reconsidered the idea. There isn't enough time to deal with the issues that are before the committee. The DNR doesn't want to send the message that people have to appear before the committee in order to have their point of view heard.

- The committee members are here to represent the groups that appointed them, divergent views are already represented.

Paul Kent – He has seen both sides of this issue. There are other ways to allow public comment: e-mail, or submission of written comments.

- This is not the right forum for public comment.

Glenn – Also raised his complaint that Al is unwilling to seat a representative of the Taxpayers for Fair Zoning group; he left the meeting after Al refused to allow a representative of Taxpayers for Fair Zoning to take a seat at the table.

Al adjourned the meeting for 10 minutes.

II. Mitigation --- Toni Herkert

Handed out revised lists of the committee members and explained that handouts on shoreland setbacks and buffers are available at the back of the meeting room; interested parties can submit written comments.

Mitigation Concepts:

The Committee needs to remember that the Department is purposing mitigation to compensate for changes that add flexibility to the standards in NR 115, to increase the protection for the resource.

Mitigation is intended to minimize the impacts of development and to compensate for lost buffer functions. Its strength lies in its ability to meet both property owners needs and that of public rights in navigable waters. A main component of mitigation involves the restoration and/or preservation of shoreland buffers. Mitigation requirements may also include removal of structures within the shoreland setback area (nonconforming and conforming structures with visual impacts), using natural or earth-toned building materials or upgrading of on-site sanitary systems. Mitigation can result in the restoration of a natural shoreline and its functions including:

- a buffer zone to filter runoff and provide wildlife habitat,
- a shoreline rich in diverse vegetation and ground cover,
- a shoreline with a healthy aquatic community structure, and
- a shoreline with dwellings and other structures that are unobtrusive and blend into the natural surroundings.

An important factor to consider is how these measures will be maintained as properties change hands. Some counties are recording affidavits or deed restrictions. Others are simply requiring any mitigation to be for perpetuity.

The goal of shoreland mitigation is simple. Provide some flexibility to shoreland property owners, while maintaining and enhancing the public interests in Wisconsin's waters.

Phil Gaudet (Washington County Mitigation) – In 2001, adopted ordinance amendments that included mitigation as part of a water body classification system with 3 classes (Class 1 least developed):

- Class 1: 175 ft. – 100 ft. setback with mitigation
- Class 2: 100 ft. – 75 ft. setback with mitigation
- Class 3: 75 ft. setback – reduced to 50 ft. using setback averaging

Property owners can choose options to obtain points for mitigation to allow reduced setbacks.

What about nonconforming structures? (They apply in mitigation)

Karl Kastrosky (Bayfield County) – Also adopted water body classification system. Bayfield County tried to build in some flexibility without a dollar cap for improvements to nonconforming structures with mitigation requirements. They use mitigation points to give landowner some options. They reward people for being good stewards – they get points if they don't have nonconforming structures or problems on their land. The ordinance is on their website; they amend it almost monthly.

Questions

How have these ordinances worked so far?

- Phil: Mitigation has worked well. Has reduced the need for variances. We require a mitigation plan that must be recorded at the Register of Deeds office.

- Karl: We don't require anyone to revegetate his or her property. Mitigation only applies if new work or development on the property is proposed.

Are people complaining?

- Phil: Surprised by the lack of comments.
- Karl: They have not had many problems either because of the flexibility in their ordinance. There is a lot of work behind the scenes to work things out, though.

Are you concerned about changing NR 115 to create standards that will interfere with your flexibility?

- Karl: No. Counties can be more restrictive than minimum standards.
- Variances are now more difficult to obtain. (Karl – we provide for special exceptions to avoid need for variances.)

What are highest points for?

- Karl: 1 point for re-vegetating a buffer.

Pam LaBine (Forest County) – Forest County has mitigation in its ordinance, too. She pointed out that the current NR 115 allowed Bayfield and Washington Counties to adopt their mitigation provisions. If all counties would do so, we could save a lot of money.

III. Shoreland Setbacks and Buffers --- Carmen Wagner

- Goal of this discussion is to find broad concepts worthy of further explanation, not to draft rule language.

Main Issues:

(1) Proposed Definitions and General Provisions

- (a) Primary Buffer
 - (b) Secondary Buffer
 - (c) Viewing and Access Corridor
- Does vegetation include dead trees? (Yes)

Nancy – Is it really important to have native vegetation, if invasive and noxious species aren't allowed?

- Native plants are adapted to the site and won't need much care; non-natives may crowd out native plants.

Pam – We will have to deal with fire hazard issue.

- What is the purpose of the primary buffer? (Filter out contaminants for water quality. Provide some wildlife habitat. Screen structures from water.)

- There may be a need to specify certain plants that can be used.

- Some members of the committee liked the idea of native vegetation because it will support native wildlife (although there should be some flexibility).

- Should it be linked to vegetation that existed at the site before development? (Something to consider.)

- What about removing logs from the water? (Can be done under ch. 20, Stats., if bed of sediment is not disturbed.)

Pam – How small a lot can we practice forestry? I'd like to be able to harvest ripe trees. Aspen, for example, will need to be clear-cut and allowed to regenerate.

Pam – We have to be careful what we plant on the shore – vegetation on the shore can increase organic compounds going into the water.

Chuck – The buffer should be left as natural as possible.

Pam – The counties have different soils and conditions to deal with.

Phil – These definitions wouldn't allow for sand beaches.

Karl – Patios, decks at grade, volleyball courts are something that need to be addressed.

- What about setback averaging? (We've moved that issue to the nonconforming structure session.)

- Should exempt structures be placed in the VAC? (Has been required in Washington County – if you allow structures in the buffer area, you reduce the buffer area.)

Chuck – What does current rule allow? Does 30 feet in 100 ft. mean 3-30 ft. corridors are allowed on a 300 ft. wide lot? (Yes, but we propose to change that.)

- Could there be more than one principal structure on a property?

- What about marinas?

- Carmen requested that comments be submitted in writing.

(2) Buffer and Setback Options:

Elmer – Why not give counties the option to choose one of several alternatives?

Chip (Neil) – The rule as it stands when it is properly interpreted and enforced works well. The rule fails now with the “no clear-cutting” wording. We need to simply revise the wording to preserve the intent of the drafters.

Nancy – She’d like the buffer as wide as possible – although she can sympathize with those who don’t want to create new nonconforming structures. She thinks that B is the best alternative because it doesn’t create any new nonconforming structures, but would go a long way toward improving lake protection.

- Likes alternative C, but would like to let people “buy back” to B by obtaining mitigation points.

What about measuring the setback on steep slopes?

- One alternative is to set 25 ft. as the minimum secondary buffer with no minimum primary buffer.

- The minimum requirement should be as simple as possible – perhaps we should focus on cleaning up the existing provisions in NR 115.

Phil – A is best option in his opinion. We don't need to change the dimensions; we need to improve the quality of the buffers in these dimensions.

- Simple standards are better. A formula would cause problems.

Chip (Neil) – Phosphorus loading is the problem; good turf may be part of the phosphorus solution; the quality of the buffer is what is important. There isn't science to support a difference between 35-40 and 50-50 buffer.

Mike Dresen – That can be done site-by-site, but not on a statewide basis.

Chuck (among others) – The outcry will be great if we try to increase the total setback to more than 75 feet.

Chip (Neil) – We can rely on peer pressure and education to change landowner behavior.

Mike Dresen – For issues like spreading fertilizer, we'll need to rely on educational efforts. He is discouraged that the options set out by the Department are all at the low end of the spectrum instead of being in the middle (~150 feet). Can we provide a way to provide incentives for counties and/or property owners to create deeper buffers and larger lots?

- There needs to be some incentive to regulate undeveloped small lakes effectively while still allowing maintenance of nonconforming structures legally built on larger lakes.

Paul Kent – There are a number of creative solutions (like rain gardens) to improve water quality – it ought to be factored in here, as mitigation or otherwise.

- Worked on standards for riparian lands in agricultural areas; deeper buffer is better, but we'd face a hornet's nest if we tried to require large enough buffer to prevent contaminant runoff.

- Use of phosphorus fertilizer could be banned within 150 feet of navigable waters; would provide a basis for an educational effort.

- Retaining runoff on-site is another option (i.e. diverting away from the lake or river).

- If you make the minimum lots bigger, you're benefiting those on the high end of the income scale.

Phil and Chuck – Education is important; should be an agenda item. Chuck would like the committee to make recommendations on education efforts.

- Tax issues impact shoreland development, too.

Advisory Committee Preferences – Shoreland Buffers and Setbacks

13 members prefer option A

11 members prefer option B

3 not at the table

(3) VAC (Viewing and Access Corridor) Options

Although some counties have gone to 10 ft. wide maximum

Phil – C is the best option, with counties having the alternative to be more restrictive. There are so many small lots, the percentage is needed.

Nancy – What about properties where there is already a wider corridor? (Only if they want to change something.) Then she likes C, too.

- How will these corridors be measured? At head height? On the ground? Tree top to treetop? To branch tips?

Chuck – An S-shaped corridor is not practical as a standard.

- If exempted structures go into VAC, then we need to allow more flexibility.

Paul Kent – We don't want to create incentives for people to subdivide their property (for example, resort situations and condo developments).

Nancy – There ought to be some height limitations in VACs; a tall tree doesn't need to be cut to allow a view of the water from a one-story house, for example.

Advisory Committee Preferences – Viewing and Access Corridor

4 members prefer option A
3 members prefer option B
14 members prefer option C
1 member didn't like any options
3 not at the table

NOTE: Many of the committee members expressed a concern that restrictions on viewing and access corridors should not create an incentive for people who own large parcels to subdivide them into several smaller parcels with less frontage in order to qualify for more viewing and access corridors. They favored special provisions for resorts, planned unit developments, and apartment or condominium developments. One member suggested that there is a height limitation of some kind, so those tall trees are not removed if the property owner would have a view of the water under the tree canopy. Others indicated that the issue of whether or not structures exempted from the shoreland setback would be required to be located in the VAC was an important issue that would affect their opinions on VAC standards generally.

(4) Vegetation Management Exceptions

Paul Kent – You should consider something other than a permit system; if you meet specified criteria, you are exempt from permitting requirement.

- How should mitigation fit in?
- We may need subchapters in NR 115 for agriculture and/or forestry.

Exceptions for management plans (special exceptions?)

- How would there be any oversight?
- What will be the standards for approval?

- Should only apply to large properties.

Mike Dresen – There should be one set of standards for recreational facilities.

Al Shea – Is the question how should the State be regulated under NR 115? Should we come back to you on that?

Phil – Same standard should apply to all, especially the State.

- You'd close all public beaches in the State!
- Existing beaches wouldn't have to be closed.
- There needs to be realistic exceptions.

Chip (Neil) – One set of standards for all public beaches, but not the same standard for residential properties.

Paul Z. – Does DNR oppose local government water access facilities? Why shouldn't the standards be the same for town government and the State?

Mike Dresen – Clarified that he wasn't saying that the same standards should be applied to residential properties and public recreational facilities.

Nancy – All these exceptions should be allowed that are listed.

Toni Herkert – Our question is if it is worth fleshing out these alternatives? (Several committee members said yes).

Phil – All exceptions listed are too general.

Mike D. – I'm hearing both "special exception" and "exemption". These are two different things.

Paul Kent – We need to distinguish between exemptions (no permit required) and special exceptions (permit if ordinance criteria are satisfied).

Miles – Forestry needs to be considered. Also where do lake associations fit in?

Al Shea – Can you react to what is here? Or do we need to do more work?

- We need some description of criteria and what level of exemption or exception will be granted if the criteria are met.

Mike Dresen – These items need to have standards developed; if that is what is being asked.

Karl – More specifics needed.

Paul Kent – There may be public projects, such as a power plant, or a privately owned marina, or privatized wastewater treatment facilities, that need to be included in exceptions list, too.

Toni – Are there other potential exceptions?

- Agricultural facilities; marinas; privately owned campgrounds.

Paul Kent – What about drainage ditches? (Clarify to be consistent with law that applies to them)

Advisory Committee Preferences – Vegetation Management Exceptions

Rework options and add additional detail – come back to the committee with modified options.

(5) Structural Exemptions or Exceptions from Setback

Piers, Boathouses and Boathouses

Paul Zimmerman – What about agricultural areas?

Carmen – We should keep in mind:

We need to consider whether some limitations on size or shape of structures are needed. Should mitigation be required?

Mike Dresen – Does the term “pier” include wharves? (Yes)

Phil – Washington County doesn't require permits for piers or boat hoists.

- Do counties require permits for boathouses? (Some do)

Chip (Neil) – Why will we permit boathouses within the setback area in light of the obvious adverse impact they have? Not needed right on the shoreline.

Nancy – Agrees 100%; she's never seen a good looking boathouse.

Advisory Committee Preferences – Piers and Boathoists

All committee members favored keeping current exemption for piers and boat hoists

Advisory Committee Preferences – Boathouses

11 members elected to require boathouses to meet the shoreland setback
10 members elected to have boathouses as exceptions with conditions such
as height and size limitations, screening and others.
1 member elected to keep the current standard

Boat Landings

Carmen – Most local ordinances don't allow private boat landings if there is public access on the water body.

Mike – Might include privately owned landings or public use as an exception.

Phil – In Washington County, a boat landing is regulated as a grading project.

- In Oneida County, a boat landing is a structure.

Karl – Bayfield County doesn't allow any earth disturbance in buffer area including boat landings.

- Reasonable access should be allowed.
- Special exception may be used if it is necessary to allow . . .

Nancy – Has a problem with CU permits in general.

Paul K. – If you don't have variances, how do you build in flexibility without CU permits?

Example: Town owns lot with lake access and wants to develop it. Thinks we need to regulate landings owned by Towns, not just private ones.

Chuck – Most people don't like lots of boat ramps.

- Need to distinguish between landings used privately and used by the public.

Chip (Neil) – Need CU permit for privately owned landings where one owner allows neighbors to haul out their boats.

Advisory Committee Preferences – Landings

All committee members favored placing the landing issue in a recreational subchapter in NR 115. DNR staff will prepare options for this subchapter and present to the committee at a future meeting.

Handicapped/Disabled Accommodations:

- Accommodations should apply to all structures, not just residences.

Mike Dresen – Advocates administrative permit, reference federal guidelines (all committee members in favor of admin. permit).

Advisory Committee Preferences – Handicapped/Disabled Accommodations

All committee members favored allowing these structures.

Stairways, Walkways and Mechanical Lifts:

Option 1 – exempt with standards (most members in favor)

Option 2 – administrative permit with standards

Option 3 – exempt without standards (one vote in favor)

- Standards are needed to prevent abuse; building a “landing” that is really a deck (maximum size should be one standard)

- Current guidelines are working well

Why change NR 115 if it’s working well?

Mike Dresen – Without rule and ordinance language, allowing these structures is not legal.

Jerry – Will NR 115 require a permit?

Committee members agreed no permit would be required – although counties could be more restrictive and require a permit (and could require them to be located in VAC).

Advisory Committee Preferences – Stairways, Walkways and Mechanical Lifts

Committee elected to request that the department codify our program guidance on stairways, walkways and mechanical lifts. The program guidance allows these structures on steep slopes or unstable soils, but requires construction standards are met.

Open Fence:

Not allowed in NR 115; included in Model Ordinance; currently not defined in rule or guidance (to the OHWM)

Mike Dresen – Required to fence agricultural lands; a definition really isn’t an issue.

Paul Z. – Will this be spelled out in the agricultural subchapter? (Yes)

Chuck – Fences, if exempt, should be subject to standards.

Karl – Lack of fences encourages buffer zones.

Jerry – Fences should be allowed to separate incompatible uses.

Phil – In Washington County, we allow open fences (more than 50% open) in shoreland setback.

Pam – Who controls definitions? (If terms are not defined in NR 115, county will control).

Jerry – Exempt fences and allow counties to regulate them if they choose (Mike Dresen agrees).

Chuck – Big difference between fences between properties and fences along the OHWM.

Karl – Will an exemption mean fences are defined as non-structures? (No)

Advisory Committee Preferences – Open Fences

Most committee members elected for an exemption without standards
1 committee member elected to have open fences as an exception with standards
1 member elected to have retaining walls meet the shoreland setback

NOTE: Issues that need to be fleshed out in this area include the differences between parallel and perpendicular fences and should fences be allowed in the primary buffer.

Retaining Walls:

Paul Kent – We need to distinguish between retaining walls above OHWM and rip-rap below OHWM. An example, 2 ft. of fill needed for floodplain zoning reasons; retaining wall needed to make lot developable.

- There may be a need for other standards other than erosion control.

Are retaining walls structures? (Yes)

Wouldn't exempt without a permit makes standards meaningless?

- Someone should review claim that standards are met.

Paul Kent – Conditional Use process can be used; preferable to variances.

Mike Dresen – Allow if they meet NRC standards and public health and safety standards.

Chuck – Allowed with conditions.

- perhaps only allowed in secondary

Karl – Shouldn't be required on newly developed sites; are really needed on properties

Paul Kent – But more steeply sloped land will be developed as land gets scarce.

Advisory Committee Preferences – Retaining Walls

14 members prefer an exception with conditions in an administrative permit
6 members elected to have an exception with a conditional use permit
2 members elected to have retaining walls exempt from the requirements of NR 115

NOTE: Standards that were discussed included the fact that the retaining wall was necessary to comply with other health and safety codes, the wall is engineered to control erosion and designed to meet technical standards, and that the reason for requesting a retaining wall is not manmade, the wall is needed due to the natural characteristics of the property.

Marine Fuel Pumps and Tanks:

- Spill containment is required, right? (Yes, under Commerce code)

Advisory Committee Preferences – Marian Fuel Tanks

Most committee members favored exempt with 10-ft. minimum setback.
1 member favored exempt with reference to Commerce Standards
1 member favored 75-ft. setback.

(6) Reduced Setback Options – will be addressed in the meeting on nonconformities

Paul Kent – We should look at structure setback exceptions for structural buffer facilities

- French drain; rain garden

Phil – “Guard Bill” provision should be codified.

Jerry – It should be included in the rule as a note.

- If the primary buffer depth is increased it will be confusing/complex because of 35-ft. setback allowed under Guard amendment.

Wetland Buffer Options:

Option C would make standard that applies when one acre or more is disturbed applicable to smaller parcels and smaller developments.

Paul Kent – Determining what a wetland is will be difficult; wetlands would need to be delineated ahead of time. No area of water law is more convoluted than wetland law; not in public interest to make it more complex.

Phil – Favors Option A; (Jerry agrees)

Bill – One can refer to the federal wetland delineation manual to define wetlands; but a *de minimis* size may be needed.

Karl – Bayfield’s wetland regulations have worked well so far.

Phil – DNR should put more emphasis on wetland delineation.

Al – asked if Paul Kent’s opinion would change if there were a better wetland delineation system.

Paul K. – Maybe; Bayfield’s approach makes sense; if County identifies wetland areas subject to buffer before hand that may be acceptable.

Wouldn’t it be better to say “setback” instead of “buffer”? (Paul Kent says no.)

Miles – What are we protecting? Small wetlands may not merit protection.

Pam – What about perched water tables? It can be agreed that they are wetlands. Wetlands are buffers themselves. This is a developing science.

Al – DNR staff would disagree.

Mike Dresen – Wetlands need to be shown on plats, so those property owners know that they are there.

Pam – How can the buffer function of a wetland be adversely impacted? (Several members responded.)

Phil – Requiring permits for development in the shoreland area already provides an opportunity to control impacts to wetlands in the shoreland area; a buffer isn’t needed.

Mike Dresen – He argues for a setback requirement, but the area could have grass, not a “buffer”.

Chip (Neil) – Wetland protection is outside scope of shoreland protection.

Advisory Committee Preferences – Wetland Buffers

11 members = A
3 members = 15 ft. buffer (mapped wetland)
4 members = C

IV. Wrap-up

Carmen – asked for written comments to supplement oral comments.

Toni – asked committee members to summarize comments from members of their groups before submitting their comments to us.

Al – You don't have to be a committee member to submit a written comment.

Committee Comments:

- receiving agendas earlier would be appreciated.
- Position papers are expected within 30 days; correct? (Yes)

Al – If you are going to send a substitute for your group to a meeting, please let us know in advance.

Future meeting dates:

Keep March 25th meeting on calendars (Start at 1:00 p.m. on March 24th);
May 6th; August 28th.
